

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff - Respondent,

Case No. 18-20166

v.

Honorable Thomas L. Ludington
Mag. Judge Patricia T. Morris

TORY RESHAWN HOPKINS,

Defendant - Petitioner.

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**ORDER DENYING DEFENDANT'S MOTION TO VACATE AND REINSTATE THE
JUDGMENT**

On June 11, 2018, Defendant pled guilty to possession with intent to distribute cocaine, in violation of 21 U.S.C. § 841(a)(1), and possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c), pursuant to a Rule 11 plea agreement. ECF No. 16. After being given an opportunity to withdraw his plea due to a change in his proposed sentencing guidelines, Defendant declined and was sentenced on September 20, 2018 to 130 months on Count One and 60 months on Count Two to run consecutive with the term imposed for Count One. ECF No. 23 at PageID.104; ECF No. 30 at PageID.146–47. Defendant did not file an appeal.

On June 5, 2019, Defendant filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. ECF No. 24. On September 9, 2019, Magistrate Judge Morris issued a report recommending that Defendant's motion be granted in part and denied in part. ECF No. 33. Plaintiff, the United States of America (the "Government"), filed an objection. ECF No. 34. On March 10, 2020, this Court entered an order adopting in part and rejecting in part Magistrate Judge Morris' report and denied Defendant's Motion to Vacate. ECF Nos. 35, 36. The Order

denied Petitioner a certificate of appealability and leave to proceed in forma pauperis on appeal. *Id.*

On December 28, 2020, Petitioner filed a notice of appeal and a request to extend the time to file a notice of appeal. ECF Nos. 37, 38. He alleged that he did not receive this Court's order until December 2020. This Court's Order was mailed to Defendant on March 10, 2021. *See* ECF No. 35 at PageID.209. However, this Court is aware of the mailing difficulties that have occurred during the COVID-19 pandemic, especially in March 2020. As such, on February 1, 2021, this Court granted Petitioner's Motion to Extend Time to File a Notice of Appeal. ECF No. 42.

In early February 2021, Petitioner filed a notice of appeal, a motion to proceed in forma pauperis, and a motion for a certificate of appealability. His motions were denied. ECF Nos. 43, 44, 47. On March 29, 2021, the Sixth Circuit denied Petitioner's appeal because it was brought more than 180 days after the entry of judgment, in violation of Federal Rule of Appellate Procedure 4(a)(6). The Sixth Circuit explained that "the time limit for filing a notice of appeal is a jurisdictional requirement" that is "derive[d] from a federal statute." ECF No. 48.

In his Motion to Vacate and Reinstate this Court's Previous Judgment, Petitioner cites *Lewis v. Alexander*, 987 F.2d 392 (6th Cir. 1993) and *Tanner v. Yukins*, 776 F.3d 434 (6th Cir. 2015). These opinions discuss the ability for a district judge to vacate and reinstate a sentence under Federal Rule of Civil Procedure 60(b)(6) for untimely appeals. However, this discretionary authority does not extend to FRAP Rule 4(a)(6), which imposes a 180-day limit for a party to appeal a judgment. As the court in *Tanner* explained,

The new provision thus established an outer time limit of 180 days for a party who fails to receive timely notice of entry of a judgment to seek additional time to appeal, advisory committee notes, and reflected the drafters' attempt to balance

the inequity of foreclosing appeals by parties who do not receive actual notice of a dispositive order against the need to protect the finality of judgments.

Tanner, 776 F.3d at 440 (internal citations and quotations omitted). In this case, Petitioner filed his Rule 4(a)(6) Motion more than 180 days after judgment was imposed. Petitioner's Motion to Vacate and Reinstate the Judgment will be denied.

Accordingly, it is **ORDERED** that Defendant's Motion to Vacate and Reinstate the Judgment, ECF No. 51, is **DENIED**.

Dated: May 14, 2021

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge